

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FRANKLIN C. SMITH,)
vs. Plaintiff,) NO. CIV-14-1374-HE
RAE HOWELL *et al.*,)
Defendants.)

ORDER

Plaintiff, appearing *pro se* and *in forma pauperis*, filed this § 1983 action asserting violations of his constitutional rights. Pursuant to 28 U.S.C. § 636(b)(1)(B)-(C), the matter was referred for initial proceedings to Magistrate Judge Shon Erwin. He has issued a thorough Report and Recommendation regarding the remaining issues in the case.

The magistrate judge recommends that the court deny plaintiff's motion for guardian *ad litem*, dismiss plaintiff's ADA claim with prejudice and decline to exercise supplemental jurisdiction over plaintiff's state law claims against defendants Howell and Moore. He further recommends that the court conclude that plaintiff's failure to amend his complaint was not due to a mental disability. Plaintiff failed to object to the Report and Recommendation and thereby waived his right to appellate review of the issues it addressed.

United States v. One Parcel of Real Property, 75 F.3d 1057, 1059-60 (10th Cir. 1996); see 28 U.S.C. §636(b)(1)(C).

Accordingly, the court **ADOPTS** Magistrate Judge Erwin's Report and Recommendation. Plaintiff's motion for guardian *ad litem* is denied. Plaintiff's ADA claim

against defendant Casteel is dismissed with prejudice and plaintiff's state law claims against defendants Howell and Moore are dismissed without prejudice.

IT IS SO ORDERED.

Dated this 15th day of April, 2016.



JOE HEATON
CHIEF U.S. DISTRICT JUDGE